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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,274	07/09/2003	George Goicoechea	BSI-210US5	1706
23122	7590	07/17/2008		
RATNERPRESTIA P O BOX 980 VALLEY FORGE, PA 19482-0980			EXAMINER BLANCO, JAVIER G	
			ART UNIT 3774	PAPER NUMBER
			MAIL DATE 07/17/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/616,274	Applicant(s) GOICOECHEA ET AL.	
	Examiner JAVIER G. BLANCO	Art Unit 3774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 54-73 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 54-73 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicants' amendment (i.e., broadening) of claims 54 and 58 in the reply filed on April 9, 2008 is acknowledged.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 55, 59, 63, 64, 72, and 73 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. Regarding each of claims 55, 59, 72, and 73, the "expandable configuration" and "expandable stent" clauses lack antecedent basis. This will be interpreted "as best understood".

b. Regarding claim 63, "said first prosthesis portion" (see line 2) lacks antecedent basis. Claim 64 depends from claim 63. This will be interpreted "as best understood"

c. Regarding each of claims 72 and 73, the limitation "the stent" is indefinite as to the scope of the invention since it does not specify to which of the stents ("prosthesis portion"; "proximal prosthesis portion"; or "distal prosthesis portion") it refers. This will be interpreted "as best understood"

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 54, 56, 58, 61, 62, 72, and 73 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by **Schwartz et al.** (US 5,443,496 A).

Referring to Figures 1, 2, 9-11, and 14-16 (particularly, Figures 14 and 15), Schwartz et al.

disclose a modular prosthesis (balloon-expandable or self-expanding prostheses shown in 1, 2, 9-11, and 14-16) comprising:

- a.** A prosthesis portion (Figures 14 and 15: middle cylinder) having a proximal end and a distal end;
- b.** A proximal prosthesis portion (Figures 14 and 15: proximal cylinder) having a proximal end and a distal end, said proximal prosthesis portion being formed separately from said prosthesis portion; each of said prosthesis portion and said proximal prosthesis portion including a flexible layer (e.g., flexible film 64) and a stent (e.g., each cylinder comprises a stent supporting a flexible layer) radially supporting said flexible layer;
- c.** A distal prosthesis portion (Figures 14 and 15: distal cylinder) having a proximal end and a distal end, said distal prosthesis portion including a flexible layer (e.g., flexible film 64) and a

stent (e.g., each cylinder comprises a stent supporting a flexible layer) radially supporting said flexible layer; and

d. Connecting means (connecting struts 68) for connecting said proximal end of said distal prosthesis portion to said distal end of said prosthesis portion.

Regarding claim 56, as the prosthesis is released from the catheter its distal end will have a diameter larger (as it expands) than a diameter of a proximal end or region.

Regarding claim 61, a thick segment will have a different radiopacity than a narrower or thinner segment. Regarding claim 62, Schwartz discloses the use of a radiopaque marker or substance.

Regarding each of claims 72 and 73, Figures 14 and 15 clearly show the stent as comprising a plurality of hoops, each being formed by a substantially complete turn of a sinuous wire having apices, and having a circumference that lies in a plane substantially perpendicular to the longitudinal axis of said stent; wherein apices of adjacent hoops are juxtaposed to one another, and at least two juxtaposed apices are connected by a securing means (e.g., welds, connecting struts, etc.).

With regards to statements of intended use and other functional statements (e.g., for repairing; for intraluminally; for connecting; etc.), they do not impose any structural limitations on the claims distinguishable over the device of **Schwartz et al.**, which is capable of being used as claimed if one so desires to do so. *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). “[A]pparatus claims cover what a device is, not what a device does.”

Art Unit: 3774

Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim. *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969).

6. Claims 54-61 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by **Lazarus** (US 5,871,536 A).

Referring to all Figures (particularly, Figure 11), Lazarus discloses a modular prosthesis comprising:

- a. A prosthesis portion (80) having a proximal end and a distal end;
- b. A proximal prosthesis portion (88) having a proximal end and a distal end, said proximal prosthesis portion being formed separately (**first interpretation:** set at a distance apart; **second interpretation:** when forming/constructing the modular prosthesis; **third interpretation:** as separate, discrete entities, which is shown in Figures 10, 11, and 13 and disclosed in the specification) from said prosthesis portion; each of said prosthesis portion and said proximal prosthesis portion including a flexible layer (e.g., graft) and a stent (rings and/or longitudinal support structures) radially supporting said flexible layer;
- c. A distal prosthesis portion (20) having a proximal end (34) and a distal end (32), said distal prosthesis portion including a flexible layer (layer/graft 22) and a stent (rings 36, 36 and/or longitudinal support structures 38; see column 3, lines 24-48; column 4, lines 10-20; column 5, lines 20-30) radially supporting said flexible layer; and

d. Connecting means (sutures, glues/adhesives, ring 35; etc.) for connecting said proximal end (34) of said distal prosthesis portion (20) to said distal end of said prosthesis portion (80).

In an alternative interpretation, the “distal prosthesis portion” is encompassed by the longitudinal support structures of tube 22 (having a stent encompassed by a ring, or rings as a whole), the “proximal prosthesis portion” is encompassed by the longitudinal support structures of leg portion 88 (having a stent encompassed by a ring, or rings as a whole), and the “prosthesis portion” is encompassed by the longitudinal support structures of leg portion 80 (having a stent encompassed by a ring, or rings as a whole). The “connecting means” could be broadly interpreted as the ring 35 and/or graft region in between the above-indicated “portions”.

The “friction fit” as broadly claimed in claims 55 and 59 (which claims have 112 2nd paragraph issues) could be broadly interpreted as structures 70 and/or inner wall surface of graft 20. Regarding claim 56, as the prosthesis is released from the catheter its distal end will have a diameter larger (as it expands) than a diameter of a proximal end or region. Regarding claim 57, see attachment means 26 and/or structures 70. Regarding claim 60, the length of the “distal prosthesis portion” will depend on the length of the target diseased tissue (i.e., patient dependent). Further, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Regarding claim 61, a thick segment will have a different radiopacity than a narrower or thinner segment.

With regards to statements of intended use and other functional statements (e.g., for repairing; for intraluminally; for connecting; etc.), they do not impose any structural limitations on the claims distinguishable over the device of **Lazarus**, which is capable of being used as claimed if one so desires to do so. *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136

USPQ 458, 459 (CCPA 1963). Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). “[A]pparatus claims cover what a device is, not what a device does.” *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim. *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969).

7. Claims 54-61, 72, and 73 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by **Song** (WO 92/06734 A1; cited in Applicants’ IDS).

Referring to Figures 1-4 and 6, Song discloses a modular prosthesis comprising:

- a.** A prosthesis portion (e.g., middle cylinder comprised by plurality of hoops 13/14) having a proximal end and a distal end;
- b.** A proximal prosthesis portion (e.g., proximal cylinder comprised by hoops 15/16) having a proximal end and a distal end, said proximal prosthesis portion being formed separately (see Figure 1) from said prosthesis portion; each of said prosthesis portion and said proximal prosthesis portion including a flexible layer (91) and a stent (stent formed by plurality of hoops comprising apices 112 and struts 111) radially supporting said flexible layer;
- c.** A distal prosthesis portion (distal cylinder comprised by hoops 11/12) having a proximal end and a distal end, said distal prosthesis portion including a flexible layer (91) and a stent (stent formed by plurality of hoops comprising apices 112 and struts 111) radially supporting said flexible layer; and

d. Connecting means (connecting members 31, 33, 35, 37, etc.) for connecting said proximal end of said distal prosthesis portion to said distal end of said prosthesis portion.

The "friction fit" as broadly claimed in claims 55 and 59 (which claims have 112 2nd paragraph issues) could be broadly interpreted as the friction fit created by connecting members 31-37 and/or inner wall surface of graft 91. Regarding claim 56, as the prosthesis is released from the catheter its distal end will have a diameter larger (as it expands) than a diameter of a proximal end or region. Regarding claim 57, see Figure 3 (41/411, 43) and Figure 6 (42, 44). Regarding claim 60, the length of the "distal prosthesis portion" will depend on the length of the target diseased tissue (i.e., patient dependent). Further, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Regarding claim 61, a thick segment will have a different radiopacity than a narrower or thinner segment.

With regards to statements of intended use and other functional statements (e.g., for repairing; for intraluminally; for connecting; etc.), they do not impose any structural limitations on the claims distinguishable over the device of **Song**, which is capable of being used as claimed if one so desires to do so. *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device is, not what a device does." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim. *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969).

8. Claims 54-61, 72, and 73 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by **Chaikof et al.** (US 5,741,325 A; cited in Applicants' IDS).

Referring to Figures 3-6, Chaikof et al. disclose a self-expanding modular prosthesis comprising:

- a. A prosthesis portion (body portion 4) having a proximal end and a distal end;
- b. A proximal prosthesis portion (**first interpretation:** portion 20; **second interpretation:** end portion of branch 34) having a proximal end and a distal end, said proximal prosthesis portion being formed separately (**first interpretation:** set at a distance apart; **second interpretation:** when forming/constructing the modular prosthesis; **third interpretation:** as separate, discrete entities, which is shown in Figures 3, 4, and 6; see column 6, lines 48-65; column 9, line 47 to column 10, line 13) from said prosthesis portion; each of said prosthesis portion and said proximal prosthesis portion including a flexible layer (e.g., sealing fiber 12; see column 5, lines 51-66; column 6, lines 19-26) and a stent (e.g., reinforcing fiber 8: see column 5, lines 51-66; column 6, lines 19-26) radially supporting said flexible layer;
- c. A distal prosthesis portion (**first interpretation:** portion 18; **second interpretation:** end portion of branch 36) having a proximal end and a distal end, said distal prosthesis portion including a flexible layer (e.g., sealing fiber 12; see column 5, lines 51-66; column 6, lines 19-26) and a stent 19-26) and a stent (e.g., reinforcing fiber 8: see column 5, lines 51-66; column 6, lines 19-26) radially supporting said flexible layer; and
- d. Connecting means (e.g., friction fit; struts, etc.) for connecting said proximal end of said distal prosthesis portion to said distal end of said prosthesis portion (body portion 4).

The "friction fit" as broadly claimed in claims 55 and 59 (which claims have 112 2nd paragraph issues) could be broadly interpreted as the friction engagement between the prosthesis

portion, proximal prosthesis portion, and distal prosthesis portion, and/or inner wall surface of graft/layer. Regarding claim 56, as the prosthesis is released from the catheter its distal end will have a diameter larger (as it expands) than a diameter of a proximal end or region. Regarding claim 57, see column 9, lines 15-20. Regarding claim 60, the length of the "distal prosthesis portion" will depend on the length of the target diseased tissue (i.e., patient dependent). Further, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Regarding claim 61, a thick segment will have a different radiopacity than a narrower or thinner segment.

With regards to statements of intended use and other functional statements (e.g., for repairing; for intraluminally; for connecting; etc.), they do not impose any structural limitations on the claims distinguishable over the device of **Chaikof et al.**, which is capable of being used as claimed if one so desires to do so. *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device is, not what a device does." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim. *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969).

9. Claims 54-73 are rejected under 35 U.S.C. 102(b) as anticipated by **Porter** (US 5,064,435 A; cited in Applicants' IDS) or, in the alternative, under 35 U.S.C. 103(a) as obvious

over **Porter** (US 5,064,435 A; cited in Applicants' IDS) in view of **Quijano et al.** (US 5,997,573 A).

Referring to Figures 1, 6, 8, and 9, Porter discloses a self-expanding modular prosthesis comprising:

- a.** A prosthesis portion (segment 82) having a proximal end and a distal end;
- b.** A proximal prosthesis portion (segment 84) having a proximal end and a distal end, said proximal prosthesis portion being formed separately (clearly shown as separate, discrete entities in Figures 8 and 9) from said prosthesis portion; each of said prosthesis portion and said proximal prosthesis portion including a stent (each segment comprises a stent formed by a plurality of hoops);
- c.** A distal prosthesis portion (segment 86) having a proximal end and a distal end, said distal prosthesis portion including a stent (each segment comprises a stent formed by a plurality of hoops); and
- d.** Connecting means (e.g., friction fit; struts, etc.) for connecting said proximal end of said distal prosthesis portion to said distal end of said prosthesis portion.

Although Porter discloses the desirability of using his/her modular prosthesis as a graft (see column 5, lines 62-66), he/she did not particularly disclose the prosthesis "portions" as including a flexible layer associated with the stents. However, vascular prostheses including a stent (or stents) and a "layer" (e.g., graft, liner, cover or covering, film, etc.) associated with the stent are well known in the art, and the use of a "layer" (e.g., graft, liner, cover or covering, film, etc.) would have been obvious from their disclosed advantages pertaining to improved prosthesis

incorporation into the target vessel, barrier against epithelial ingrowth, drug delivery, sealing against blood leakage, etc.

Regarding claim 56, as the prosthesis is released from the catheter its distal end will have a diameter larger (as it expands) than a diameter of a proximal end or region. Regarding claim 57, the securing means are broadly interpreted as the outer-most end of the proximal prosthesis portion. Regarding claim 60, the length of the "distal prosthesis portion" will depend on the length of the target diseased tissue (i.e., patient dependent). Further, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Regarding claim 61, a thick segment will have a different radiopacity than a narrower or thinner segment. Regarding claim 62, Porter discloses the use of radiopaque marker or markings. Regarding claim 63, the limitation is taken as a statement since it is inherent and obvious the radiographic image will be different depending on the orientation of one portion/segment in relation to another portion/segment. Regarding claim 64, it would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to construct Porter radiopaque marker as configured in a "V" shape, since it is anything more than one of numerous shapes or configurations a person ordinary skill in the art would find obvious for the purpose of indicating the luminal position of a tubular prosthesis. *In re Dailey and Eilers*, 149 USPQ 47 (1966). Regarding claims 65 and 66, it is inherent and obvious to include a radiopaque marker or marking at an end of each portion/segment in order to facilitate alignment of one portion/segment with another portion/segment.

The prosthesis is made from stainless steel and is self-expanding, therefore having shape memory properties. The "friction fit" as broadly claimed in claims 55 and 59 (which claims have

112 2nd paragraph issues) is broadly interpreted as the friction engagement/fit between the prosthesis portion, proximal prosthesis portion, and distal prosthesis portion. Regarding claim 67, segment 86 is associated with a male engaging portion entered, in a compressed state, into a female portion associated with segment 82. Regarding the particular shape of the male engaging portion and/or female engaging portion, Porter discloses the claimed invention except for disclosing the male and female engaging portions as frustoconical shaped. It would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to construct Porter male and female engaging portions as including a frustoconical shape, since it is anything more than one of numerous shapes or configurations a person ordinary skill in the art would find obvious for the purpose of connecting segments/portions of a tubular prosthesis. *In re Dailey and Eilers*, 149 USPQ 47 (1966). Further, this is already known in the art. For example, **Quijano et al.** disclose a modular prosthesis comprising components/segments/portions connected by frustoconical male and female engaging portions (see Figure 17) in order to facilitate alignment of the components/segments/portions of the modular prosthesis (see column 4, lines 60-64). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to have combined the teaching of a modular prosthesis comprising components/segments/portions connected by frustoconical male and female engaging portions, as taught by Quijano et al., with the modular prosthesis of Porter, in order to facilitate alignment of the components/segments/portions of the modular prosthesis.

With regards to statements of intended use and other functional statements (e.g., for repairing; for intraluminally; for connecting; etc.), they do not impose any structural limitations on the claims distinguishable over the device of **Porter**, which is capable of being used as

Art Unit: 3774

claimed if one so desires to do so. *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). “[A]pparatus claims cover what a device is, not what a device does.” *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990). Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim. *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969).

Conclusion

10. Applicant's amendment (i.e., broadening of the claims) necessitated the ground(s) of rejection presented in this Office action. By amending the claims such that they are no longer in conflict with the other patent, they are now drawn to a different (broader) invention.

11. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Javier G. Blanco whose telephone number is 571-272-4747. The examiner can normally be reached on M-F (9:00 a.m.-7:00 p.m.), first Friday of the bi-week off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Isabella can be reached on **(571)272-4749**. The fax phone numbers for the organization where this application or proceeding is assigned is 571-273-8300 for regular communications and After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 10/616,274
Art Unit: 3774

Page 16

/Javier G. Blanco/

Examiner, Art Unit 3774

/Dave Willse/

Primary Examiner, Art Unit 3738